Harris-Teeter Super Markets, Inc. *and* United Food and Commercial Workers Union, Local 204, affiliated with United Food and Commercial Workers International Union, AFL–CIO, CLC. Cases 11–CA–13198, 11–CA–13588, 11–CA–13911, and 11–CA–14179

January 29, 1993

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On July 21, 1992, Administrative Law Judge Robert A. Gritta issued the attached supplemental decision. The General Counsel filed exceptions and a supporting brief. The Respondent filed cross-exceptions, a supporting brief, and an answering brief. The General Counsel filed an answering brief to the Respondent's cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the supplemental decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Supplemental Decision and Order.

In our earlier Decision and Order,[2] we adopted Judge Gritta's findings that the Respondent violated Section 8(a)(1), (3), (4), and (5) of the Act when it issued warnings to unit employees, used casual labor in the cafeteria, changed unit employees' workweeks, changed work rules, and removed work from the bargaining unit and assigned it to nonunit employees. The judge also found that the Respondent engaged in direct dealing with its employees but, in reaching his decision, the judge failed to make a crucial credibility determination. Accordingly, we remanded the direct dealing allegation to the judge to determine credibility and issue a supplemental decision. That supplemental decision is now before us. We adopt the judge's credibility resolutions but reverse his conclusions on the direct dealing issue.

I. BACKGROUND

The Union became the certified representative of the Respondent's employees[3] on August 5, 1976. The parties have met on numerous occasions since 1976 but have failed to reach agreement on a contract. They have, however, negotiated several side agreements concerning specific workplace issues including an October 25, 1988 letter of understanding, in which the parties agreed, inter alia, that the Respondent could change a person's ''hours or shift'' for up to 30 days without negotiating the change with the Union.[4]

In 1988 Christmas fell on Sunday, a regular workday for the salvage dock employees. As a result, the Respondent decided that the salvage dock employees would work on their normal day off, Saturday, December 24, leaving them off on Christmas Sunday. Day-Shift Manager Johnson subsequently decided that it was more efficient to have the salvage dock employees work regularly on Saturday rather than on Sunday, and obtained Warehouse Manager Kiser's permission to revise the work schedule. Under the old work schedule, one of the salvage dock employees worked Monday through Friday, one worked Sunday through Thursday, and three employees rotated schedules. Under Johnson's revised schedule, all employees rotated schedules and their day off changed from Saturday to Sunday.

On January 16, 1989, Johnson called the salvage dock crew into his office and presented them with the temporary work schedule that he said was a test of his theory of efficiency. According to the credited testimony of employees Allen, Rogers, and Craig, Supervisor Dunegan asked if employees ''liked the change,'' and Johnson, after passing out the schedule, asked ''if anyone had a comment'' and ''who was for it [the change]?'' After the employees voiced their objections to the proposed schedule, Johnson told them that the new schedule was effective immediately.

Johnson testified that the Respondent did not notify or consult with the Union before making the work schedule change because the change was privileged under the 30-day provision of the 1988 letter of under-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We find, contrary to the Respondent, that the judge's credibility resolutions were based on his observation of the witnesses and their demeanor on the witness stand and not merely on the ''plausibility'' of their testimony.

[2] *Harris-Teeter Super Markets*, 307 NLRB 1075 (1992).

[3] The Respondent filed a cross-exception regarding the appropriateness of the bargaining unit. Contrary to the Respondent's cross-exception and in accordance with our earlier Decision and Order, we reaffirm our rejection there of Respondent's exception to the unit finding. The appropriate unit is:

> All employees employed by Respondent at its Charlotte, North Carolina, distribution center and bakery including leadmen, dispatchers, warehouse clerical employees, drivers, fork lift maintenance employees, refrigeration mechanics and regular part-time employees, excluding office clerical employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

[4] The letter states: ''The Company maintains the right to change a person's hours or shift for up to thirty days (30) without negotiating this change with the Union. These thirty day changes cannot be concurrent in order to avoid bargaining.''

standing.[5] On January 20, 1989, 4 days after the Respondent instituted the work schedule change, the Respondent and the Union met for a regularly scheduled bargaining session. The Respondent failed to advise the Union of the change in the work schedule of the salvage dock employees at the January 20 session. The Respondent did not notify the Union of the changed workweek until the next meeting, held on February 9, 1989.

II. JUDGE'S SUPPLEMENTAL DECISION

The judge found that the testimonial evidence of Johnson's meeting with the employees on January 16, 1989, although not identical in substance among all the witnesses, was for the most part undisputed. Where dispute existed, the judge credited the testimony of employees Allen, Rogers, and Craig.

The judge, however, further found that the testimony of all the witnesses showed that the change in the work schedule was already effective when the employees received their copies of the revised schedule. The judge thus concluded that any objections voiced by the employees had no effect on the work schedule and were ''nothing more than idle remarks'' falling on the ears of Johnson and Dunegan. He reasoned that because the work-schedule change was effective immediately on its announcement, neither Johnson nor Dunegan ''sought employees desires or opinions as formulative material for the new work schedule when they assembled the employees.'' The judge thus concluded that the General Counsel's proof did not sustain the allegation that the Respondent had dealt directly with its employees concerning the proposed changes in their work schedule.

III. ANALYSIS

As noted, we adopt the judge's credibility resolutions. Having done so, however, we reverse the judge's conclusion that there was no direct dealing. At the time of the alleged direct dealing, the Respondent and the Union were engaged in ongoing negotiations and had regularly scheduled negotiating sessions. The employees' work schedule and their days off were clearly subjects over which the Respondent was obligated to bargain with the Union. Despite this, the credited testimony shows that the Respondent solicited employee sentiment with respect to a subject it was going to raise with the Union in upcoming negotiations—the changed workweek. It asked the employees if they ''liked'' or ''were for'' the change in the work schedule, thus plainly seeking the employees' views. Contrary to the Respondent's arguments and the cases it cites,[6] the Respondent was not merely ''notifying employees of a pre-determined course to which the Respondent was committed.'' Even Shift Manager Johnson admitted that the proposed work schedule change was temporary and that there would be negotiations with the Union prior to establishing any permanent change in the schedule. By soliciting the sentiment of the employees on a subject to be discussed at the bargaining table, Respondent was usurping the Union's function and attempting to arm itself for upcoming negotiations.

Contrary to the judge, we find it to be of no consequence that the Respondent did not change its position after hearing the employees' negative reactions to the proposal. As set forth in *Obie Pacific, Inc.*, 196 NLRB 458 (1972), the issue is whether the Respondent ''may attempt to erode a union's bargaining position by engaging in a direct effort to determine employee sentiment'' rather than discuss such matters solely with the Union (id. at 458–459). The Respondent ''may not seek to determine for himself the degree of support, or lack thereof,'' which exists for a position that it seeks to advance in negotiations with the employee bargaining representative. Id. at 459. See also *NLRB v. Wallkill Valley General Hospital*, 866 F.2d 632 (3d Cir. 1989), enfg. sub nom. *Alexander Linn Hospital Assn.*, 288 NLRB 103 (1988). By seeking to ascertain employee sentiment on the changed work schedule in advance of presenting the proposed change to the Union, the Respondent engaged in direct dealing in violation of Section 8(a)(5) of the Act.

[5] In our earlier Decision and Order, we found that the Respondent was not privileged under the 1988 letter of understanding to make a unilateral change in the employees' ''work week,'' i.e., the phrase ''hours and shift'' did not waive bargaining rights as to changes in the workweek.

[6] The cases cited by the Respondent are *Western Foundries*, 233 NLRB 1033 (1977); *Oak Cliff-Golman Baking Co.*, 202 NLRB 614 (1973), on reconsideration 207 NLRB 1063 (1973), enfd. mem. 505 F.2d 1302 (5th Cir. 1974), cert. denied 423 U.S. 826 (1975); *Johnson's Industrial Caterers*, 197 NLRB 352 (1972), enfd. 478 F.2d 1208 (6th Cir. 1973); and *Huttig Sash & Door Co.*, 154 NLRB 811 (1965), enfd. 377 F.2d 964 (8th Cir. 1967). These cases are distinguishable. In *Western Foundries*, the respondent had instituted a profit-sharing plan and was explaining the plan and inviting employees to participate. It did not seek employee input or seek to negotiate on this issue. In *Oak Cliff-Golman Baking Co.*, the respondent was suffering financial problems and revoked a wage increase. The respondent advised employees of the predetermined wage reduction but did not bargain about the issue or solicit employee opinions as to the reduction. In *Johnson's Industrial Caterers*, the respondent announced a change in operations and thereafter discussed the problems with the new system with employees. The judge found the respondent's conduct did not constitute direct dealing with employees in the normal sense of the word as respondent was not making offers to employees seeking acceptances nor seeking to induce employees to repudiate the union. Such is not the case here where the Respondent was seeking employee acceptance of its proposal. And in *Huttig Sash & Door Co.*, conferences with employees were found to be ''hollow'' as management had already committed itself to a course of action in cutting wages. Here, at the time the Respondent spoke to the employees, it had not yet committed itself to permanent schedule changes.

ORDER

The National Labor Relations Board orders that the Respondent, Harris-Teeter Super Markets, Inc., Charlotte, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Dealing directly with its employees concerning proposed changes in the employees' work schedules.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Bargain collectively in good faith with the Union as the exclusive bargaining representative of all employees in the following unit:

> All employees employed by Respondent at its Charlotte, North Carolina distribution center and bakery including leadmen, dispatchers, warehouse clerical employees, drivers, fork lift maintenance employees, refrigeration mechanics and regular part-time employees, excluding office clerical employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

(b) Post at its offices in Charlotte, North Carolina, copies of the attached notice marked ''Appendix.''[7] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and shall be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT deal directly with our employees concerning proposed changes in their work schedules.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL bargain collectively in good faith with United Food and Commercial Workers Union, Local 204, affiliated with United Food and Commercial Workers International Union, AFL–CIO, CLC as the exclusive bargaining representative of all employees in the following appropriate unit:

> All employees employed by us at our Charlotte, North Carolina distribution center and bakery including leadmen, dispatchers, warehouse clerical employees, drivers, fork lift maintenance employees, refrigeration mechanics and regular part-time employees, excluding office clerical employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

HARRIS-TEETER SUPER MARKETS, INC.

Jane North and *Joseph T. Welch, Esqs*., for the General Counsel.
J. Howard Daniel and *E. Leigh Mullikin, Esqs*., for the Respondent.
Eileen Hanson, for the Charging Party.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

ROBERT A. GRITTA, Administrative Law Judge. This case was tried before me on January 22, 23, 24, and 25, 1991, in Charlotte, North Carolina, based on charges filed by United Food and Commercial Workers Union, Local 204, affiliated with United Food and Commercial Workers International Union, AFL–CIO, CLC (the Union) in February and

November 1989 and July and December 1990 and a complaint issued by the Regional Director for Region 11 of the National Labor Relations Board on January 8, 1991. The complaint alleged that the Harris-Teeter Super Markets, Inc. (Respondent) violated Section 8(a)(1), (3), (4), and (5) of the Act by changing work assignments of employees, dealing directly with unit employees, changing work rules, issuing warnings to unit employees and removing work from bargaining unit employees for assignment to nonunit employees. Respondent's timely answer denied the commission of any unfair labor practices.

My original decision issued September 30, 1991. The Board's Decision and Order issued June 30, 1992.[1] In its Order the Board remanded a portion of the case to me for credibility findings, findings of fact, conclusions of law and a recommended Order, without reopening the record.

On the entire record in this case and from my observation of the witnesses and their demeanor on the witness stand, and on substantive, reliable evidence considered along with the consistency and inherent probability of testimony, I make the following

FINDINGS OF FACT

I. JURISDICTION AND STATUS OF LABOR ORGANIZATION—PRELIMINARY CONCLUSIONS OF LAW

The complaint alleges, Respondent admits, and I find that Harris-Teeter Super Markets, Inc. is a North Carolina corporation engaged in the retail sales of groceries, produce, and other goods in several States with a warehouse and distribution center in Charlotte, North Carolina. Jurisdiction is not in issue. Harris-Teeter Super Markets, Inc., in the past 12 months, in the course and conduct of its business operations purchased and received goods and materials at its Charlotte warehouse facility valued in excess of $50,000 directly from points located outside the State of North Carolina and shipped products from its Charlotte warehouse facility valued in excess of $50,000 directly to points located outside the State of North Carolina and derived gross revenue in excess of $500,000.

I conclude and find that Harris-Teeter Super Markets, Inc. is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I conclude and find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND[2]

Respondent operates retail grocery stores in Virginia, South Carolina, and North Carolina. When the bargaining unit was originally described, a distribution center including an employee cafeteria and bakery was located at Chesapeake Drive, Charlotte, North Carolina. The retail grocery stores were supplied from the distribution center. Sometime later the distribution center was moved to its present location on Indian Trail just outside the limits of Charlotte. The cafeteria continues to operate but the bakery was closed in 1989. The distribution center, also know as the Indian Trail warehouse, is the only union organized division of Respondent.

Historically refrigeration service for the retail stores was administered from the Charlotte distribution center where all refrigeration mechanics were assigned. At the time of union certification Respondent employed 7 refrigeration mechanics to service 55 retail grocery stores and 17 Holly Farms outlets. Each mechanics geographic territory was determined by his personal domicile and the location of retail stores approximate to his domicile. The territories were basically equal in numbers of stores to ensure proficient servicing. As new stores were opened and old stores closed the territories were adjusted to maintain equality and efficiency.

In 1984 Respondent merged with Food World resulting in a nonbargaining unit group of refrigeration mechanics working out of the Greensboro warehouse of Food World and a realignment of all refrigeration mechanics service areas without regard to unit placement. Following realignment 9 bargaining unit mechanics serviced 79 stores and 6 nonbargaining unit mechanics serviced 48 stores. By 1986 the unit mechanics were 8 in number servicing 75 stores and the nonunit mechanics numbered 5 servicing 44 stores. Beginning with the merger and continuing today, stores assigned to refrigeration mechanics on the basis of geography resulted in unit mechanics servicing stores formerly serviced by nonunit (Food World) mechanics and vice versa. The dynamics of store openings and closings made realignments necessary constantly and dictate the dual service functions of the unit and nonunit mechanics.

The April 1988 acquisition of 51 Big Star stores resulted in 20 new store openings and a territory realignment for mechanics in May 1988. The most recent realignment occurred in March 1989 utilizing eight unit and eight nonunit mechanics for a substantially equal service requirement of each refrigeration mechanic.

I take judicial notice of the prior case involving this Respondent tried on September 12 and 13, 1988, with a judge's decision issuing December 14, 1988, and the Board Order of April 10, 1989 (*Harris-Teeter*, 293 NLRB 743 (1989)), and the unpublished decision of the Court of Appeals for the Fourth Circuit dated May 10, 1990 (No. 89–3326, J–2720), enforcing the Board Order.

III. THE APPROPRIATE UNIT

The complaint alleges and Respondent admits the following to be the appropriate bargaining unit:

> All employees employed by Respondent at its Charlotte, North Carolina, distribution center and bakery including leadmen, dispatchers, warehouse clerical employees, drivers, fork lift maintenance employees, refrigeration mechanics and regular part-time employees, excluding office clerical employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

The Union became the certified representative of Respondent's employees on August 5, 1976. Although Respondent, in its answer, denies that the Union's representation has been continuous, there is no intervening suspension or withdrawal of certification by the Board. Therefore the Union remains the certified representative of Respondent's employees. Re-

[1] *Harris-Teeter Super Markets*, 307 NLRB 1075 (1992).

[2] Undisputed testimony and objective evidence in the record.

spondent amended its answer to admit that the Union was the exclusive bargaining representative for all periods relevant herein.

Originally, the distribution center was located on Chesapeake Drive in Charlotte and included a bakery, an employee cafeteria and dispatching of the refrigeration mechanics to the various retail stores to which they were assigned. Prior to 1989 the facility was moved to a new location in the environs of Charlotte known as Indian Trial. Thereafter the bakery operation and dispatch of the refrigeration ceased but the cafeteria remained in operation. Respecting those evolutionary changes the unit description remains substantially accurate.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

Direct Dealing with Employees on Changes in Work Schedules, January 16, 1989

In 1988 Christmas day fell on Sunday, a regular workday for Salvage dock employees. Sometime before Christmas it was decided that employees would work Saturday, Christmas eve, and be off Christmas Sunday. Johnson, day shift manager, realized that the dock worked more efficiently on Saturday than it did on Sunday. The inefficiency focused on the switcher/spotter, an employee who moves trailers into position for the salvage dock employees to work, who also normally worked Sunday. All the trailers came back to the warehouse on Saturday and the switcher spotted them on Sunday. With the switcher working Saturday he could spot trailers as they came in and some drivers could back their trailer to the dock rather than leave them shuttered in the yard. In addition Craig who did not work weekends would give the dock an extra employee on Saturdays. Craig's regular work schedule was Monday thru Friday and he had gotten that schedule through the bidding process several years before. Johnson reported his revised work scheduled to Kiser, who later gave him the go-ahead. Johnson called the dock crew into his office and presented them with the temporary schedule which he said was a test of his theory of efficiency. Johnson testified that either Dunegan, Brewer, or he asked if the employees had any questions. Johnson only recalled Craig responding by questioning the rotation of Saturday as a day off and stating he wanted to continue Saturday and Sunday off each week. Johnson then told the employees that the new work schedule was implemented. Johnson made the work schedule change without notification to or consultation with the Union because the 30-day agreement permitted the Company to do so.

Kiser testified that Johnson suggested a Monday-to-Saturday operation for the salvage dock rather than a Sunday to Friday to improve efficiency of the switcher. One employee had a set scheduled Monday–Friday, one employee was Sunday–Thursday and three employees rotated. The new schedule would rotate all five employees. The change was not negotiated with the Union because it did not have to be negotiated.

Murray, personnel administrator, in response to Kiser's query about adjusting the work schedules of salvage dock employees told Kiser he could do so in accord with the 30-day agreement. Murray was on the Respondent's negotiating team but did not notify the Union of the change in work schedules until the February 9, 1989 negotiating session. Murray explained that Respondent waited until February because that was the scheduled negotiation. He was aware that the Union after receiving a proposal usually wanted time to consider and to investigate.

Dunegan was present when Johnson gave each employee a copy of the new work schedule. He may have asked the employees, ''any questions?'' Dunegan did not ask employees for opinions because of the old unfair labor practice case. Dunegan recalled that several employees expressed displeasure with the new work schedule but it went into effect immediately. The change was not negotiated with the Union because the Company can make any changes necessary for the operation for 30 days.

Several salvage dock employees testified to meeting in Johnson's office. Allen stated that Dunegan asked if employees liked the change and the employees said they did not like the change. Johnson told the group he would keep track of the new schedule for 30 days and before the 30 days is up let the Union know and make a decision. Rogers recalled that Johnson, after he passed out the new work schedule of A, B, C teams asked if anyone had a comment. Rogers said he did not like the new days off preferring his Sunday through Thursday schedule. Johnson said the new schedule was effective immediately. Craig remembered Johnson stating that the workweek schedule would be changed to Monday through Saturday with a rotating day off, for 30 days. Johnson said it would be better for the switcher and a supervisor on Saturday would take some pressure off of him. Johnson asked the group, who was for it? Some said yes, some said no. Craig said, ''No'' and Johnson told Craig he was against it because he now has every weekend off. Johnson said the new work schedule would go into effect the next day for a 6-week period.

Steward LeGrand testified without contradiction that the 1983 agreement, referred to as the forerunner of the October 1988 letter of understanding respecting Respondent's right to change a person's hours or shift, was based on a shift change from night shift to day shift to accommodate production. There was no temporary workweek schedule change and certainly no permanent change. Also the 1986 settlement agreement alluding to produce employees involved Respondent's unilateral change of an employee's work schedule at Christmas time without negotiating the change with the Union. LeGrand stated that Respondent has, since 1986, bargained with the Union over changing workweek schedules during holidays and special occasions such as Super Bowl Sunday.

Union Representative Hanson's testimony echoed LeGrand's relative to the 1983 agreement as a basis for the 1988 letter of understanding and the past practice of Respondent bargaining with the Union over changes in workweeks since 1986. Particularly 1987 that dealt with changes in several departments including the salvage dock. Hanson also stated that on January 20, 1989, 4 days after Respondent initiated the new workweek schedule, the parties met in a scheduled negotiation. The Company did not notify the Union at that time of the changed workweek for the salvage dock employees. At the February 9 meeting the Company informed the Union of the change made on January 16 and proposed making the change permanent. The Union objected to the manner and means of the change and the workweek reverted in late February.

The objective evidence in the record shows that following by only months the 1986 settlement agreement, which included proscriptions against changing the working conditions of bargaining unit employees, Respondent changed the work schedule of a produce employee without negotiation with the Union. The work schedule change was settled September 11, 1987, with an official, ''Notice to Employees,'' declaring that Respondent would not unilaterally make such changes again. Subsequent bargaining included proposed changes in hours and days of the salvage dock employees and the building and grounds department employees. However, in March 1988 Respondent dealt directly with employees in the salvage dock in an attempt to institute a 4-day workweek admitting to the employees that such a change had to be discussed with the Union. Respondent's direct dealing was found an unfair labor practice in December 1988, *Harris-Teeter*, supra.

Analysis

Dealing Direct:

The record evidence of Johnson's meeting with the salvage dock employees on January 16, 1989, to announce a change in the work schedule, although not identical in substance among the witnesses, is basically undisputed. Dunegan and Johnson admitted that the employees may have been asked, ''any questions'' and Allen recalled that Dunegan asked, ''If employees liked the change.'' Rogers recalled that Johnson, after passing out the new schedule, asked if anyone had a comment and Craig remembered that Johnson, after announcing the change in the work schedule, asked the group, ''who was for it?'' Kiser, Murray, and Johnson testified without contradiction to the genesis of the changed work schedule. It would be most unusual for several witnesses to recall a colloquy between supervisor and employees, identically. Here, although the words and phrases differ, the substance does not change. Allen, Rogers, and Craig had previously set days off resulting from bid procedures or seniority choices and were most effected by the schedule change. It is most plausible that they would be attentive and worthy of belief when recalling the incident. In addition each of the three employees testified in a forthright and direct manner making a genuine effort to recall the event as it happened. I therefore credit the accounts of Allen, Rogers, and Craig with regard to statements made or questions asked at the crew meeting. However, the testimony of the employee witnesses as well as that of the supervisors shows conclusively that the change in the work schedule was effective at the time the employees received their copies of the schedule in the meeting. Any objections voiced by the employees in response to any statement or question by Johnson or Dunegan had no effect on the substance of the work schedule. Employee responses were nothing more than idle remarks falling on the ears of Johnson and Dunegan. In view of the undisputed immediate effectiveness of the work schedule change I conclude, on reflection, that neither Johnson nor Dunegan sought employees' desires or opinions as formulative material for the new work schedule when they assembled the employees. The uncontroverted and credited testimony evinces that the changed work schedule was Johnson's product and was completed prior to the meeting with the employees and without input from any salvage dock employee. Therefore, the General Counsel's proof does not sustain her complaint allegation in paragraph 17(b) that Respondent dealt directly with its employees concerning proposed changes in their work schedules.

Additional Conclusions of Law

The General Counsel has failed to prove that Respondent dealt directly with its employees concerning proposed changes in their work schedules.

[Recommended Order omitted from publication.]